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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,267	12/27/2004	Robert Martin Dickson	17625-0073	8974

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SUTHERLAND ASBILL & BRENNAN LLP
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ATLANTA, GA 30309

EXAMINER

CHIN, CHRISTOPHER L

ART UNIT	PAPER NUMBER
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1641

MAIL DATE	DELIVERY MODE
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10/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/519,267

Applicant(s)

DICKSON ET AL.

Examiner

Christopher L. Chin

Art Unit

1641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 1-53 and 69-72 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 54-68 and 73-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date 5/22/07
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group IV – claims 54-79 and encapsulation with a polypeptide (claims 73-79) in the reply filed on 6/30/08 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 1-53 and 69-72 are withdrawn from consideration since they are directed to non-elected claims.

Claim Rejections - 35 USC § 112

2. Claims 54-68 and 73-79 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 54 is vague because it appears to be incomplete. While the preamble of the claim is directed to a method of monitoring a molecule of interest, the body of the claim is directed to detecting the emission spectrum of a fluorescent label. A correlation step is missing that relates the detected emission spectrum of the fluorescent label to the molecule of interest.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 54-68 and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Leuvering.

Leuvering (US Patent 4,313,734) discloses methods of immunoassay for detection of a desired analyte using nanoclusters of encapsulated noble metal particles (col. 5, lines 4-19 show a sandwich assay). The noble metal particles can be composed of gold, silver, or copper (col. 3, line 26). The noble metal particles can be encapsulated with proteins (i.e. polypeptides), such as albumin or protein A. The nanoclusters contain two or more noble metal particles (col. 4, lines 1-19). Detection of the nanoclusters can be done colorimetrically (i.e. fluorescently) (col. 5, lines 37-52).

With respect to claims 57-59 and 62-65, since the nanoclusters of Leuvering are composed of the same materials as the instantly claimed nanoclusters, they will exhibit the same properties as those recited in claims 57-59 and 62-65.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 74 and 76-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leuving in view of Slocik et al.

See above for the teachings of Leuving.

Leuving differs from the instant invention in failing to teach using a specific polypeptide of 5-500 amino acids in length to encapsulate the noble metal particles.

Slocik et al (Nano Letters, "Monoclonal Antibody Recognition of Histidine-Rich Peptide Encapsulated Nanoclusters") teaches encapsulating gold particles with a histidine rich polypeptide - AHHAHHAAD (HRE) from HRP II. The HRE polypeptide appears to provide for a stable nanocluster (page 170).

It would have been obvious to one of ordinary skill in the art to use the HRE polypeptide of Slocik et al to encapsulate the metal particles of Leuving because Leuving generically teaches using polypeptides to encapsulate the metal particles and the HRE polypeptide provides the advantage of a more stable nanocluster.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher L. Chin whose telephone number is (571) 272-0815. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher L. Chin/
Primary Examiner, Art Unit 1641

10/14/08